

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JAMES ROZELL,
Appellant.

No. 2 CA-CR 2019-0097
Filed October 11, 2019

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pinal County
No. S1100CR201601399
The Honorable Patrick K. Gard, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel
By Karen Moody, Assistant Attorney General, Tucson
Counsel for Appellee

Harriette P. Levitt, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

ECKERSTROM, Judge:

¶1 In 2017, after a trial *in absentia*, a jury found James Rozell guilty of possession of a dangerous drug (methamphetamine) and drug paraphernalia, offenses he committed in 2016. In April 2019, the trial court sentenced him as a category-three repeat offender to concurrent sentences, the longer of which is the eight-year minimum sentence required under A.R.S. § 13-703(J) for the class four possession conviction. On appeal, Rozell challenges this enhanced sentence but not his underlying convictions. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

¶2 Rozell contends his sentence in this case was illegally enhanced without a hearing regarding his prior convictions. But, as the state explains,¹ the trial court sentenced Rozell in this case simultaneously with sentencing for a newer drug charge from 2017. For that 2017 charge, Rozell pled guilty to possession of methamphetamine. And in the plea agreement, which was included in the record before the court at sentencing, Rozell stipulated to understanding that:

by accepting this plea, he is admitting he was previously convicted in Maricopa County Superior Court matters CR9393583, CR9492475, CR2005-113908, CR2017-151746-001 and Pinal County Superior Court matter 200500850 which may be used by the State to establish that he has historical prior convictions for sentencing purposes in CR201601399 [i.e., this case].²

¹Notably, Rozell has chosen not to file a reply brief to respond to the explanations provided by the state.

²We may take judicial notice of Rozell's plea agreement in the 2017 case. *See State v. Valenzuela*, 109 Ariz. 109, 110 (1973) (appellate court "may

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At sentencing, the court approved the terms of the plea and enhanced Rozell's sentence in this case accordingly, with no objection from defense counsel.

¶3 Rozell correctly argues that a trial court may not enhance a defendant's sentence based on a prior conviction unless the state has proved that conviction by clear and convincing evidence *or* "the defendant [has] admit[ed] that he was previously convicted of a felony." Where, as here, the defendant has not admitted to his prior convictions on the stand, the court may only accept his admission to such priors after the pleading procedures established in Rule 17, Ariz. R. Crim. P., have been followed. Ariz. R. Crim. P. 17.6. "Rule 17 requires the judge to engage in a plea-type colloquy with the defendant to ensure that the admission [to one or more prior convictions] is voluntary and intelligent." *State v. Morales*, 215 Ariz. 59, ¶ 1 (2007).

¶4 Rozell pled guilty at a hearing during which the trial court engaged him in a plea-type colloquy to ensure that his admission to the prior convictions was knowing, intelligent, and voluntary. It was thus permissible for the court to enhance Rozell's sentence based on those prior convictions without a separate hearing on the issue. *See id.* ¶ 7 (need for hearing is "obviated" if defendant "admits to the prior conviction" and requirement of "plea-type colloquy" has been satisfied).

¶5 We therefore affirm Rozell's sentences.

take judicial notice of the records of the Superior Court"); *see also* Ariz. R. Evid. 201(b)(2).